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REMARKS

Claims 1-5 and 8-19 stand rejected under 35 USC 102(e) as being anticipated by Civanlar et al., USP 5,617,540 ("Civanlar"). Claims 6-7 stand rejected under 35 USC 103(a) as being unpatentable over Civanlar in view of Ogawa et al., USP 5,715,397 ("Ogawa").

Turning first to independent claims 1 and 2, it is respectfully submitted that Civanlar does not anticipate claims 1 or 2.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP 2131.

As will be shown below, Civanlar does not disclose the element of either "an association between servers containing the highest availability" (claim 1) or "configuring an association between servers containing the highest availability" (claim 2).

Turning first to the Civanlar disclosure, a system is disclosed therein directed towards determining whether servers are capable of serving new clients:

The multimedia server manager collects real-time status information so as to determine the ability of the multimedia servers in the network to serve new clients. The multimedia server manager, in conjunction with a name mapper,

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dynamically modifies the current host name-to-layer-3 address binding in a name server as a function of changes in the ability of the multimedia servers to serve new clients. (Col. 2, lines 50-56)

To this end, a "host-state" table is created, as illustrated in Table 3:

TABLE 3

S1	BUSY
S2	NOT BUSY
S3	NOT BUSY
S4	NOT BUSY

In Table 3, four servers S1-S4 are listed with their corresponding load state indicated. Referring to Col. 5, lines 38-58 (the section relied on by the Examiner in the instant rejection), Civanlar defines the states as follows:

Each multimedia server has two states, 1) an availability state and 2) a usage state. ... These two states are combined to form a single "service" state for a multimedia server. If the multimedia server is idle or inactive while being available, its service state is "NOT BUSY". If the multimedia server is unavailable or full, its service state is BUSY.

Thus, Civanlar teaches forming a single, binary, "service state" that indicates whether a server is "available", i.e., whether the server is available to accept new clients.

Applicant notes that the service state does not indicate the current load level of a particular server, i.e., how busy a particular server is in relation to other servers. For

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example, in Table 3, there is no indication as to which of the “not busy” servers S2-S4 is the least busy server, nor is there an indication of the relative load level between the servers that are available.

Thus, Civanlar prevents a client from attempting to connect to a server that is unable to handle any more traffic by not sending new clients to a server that has designated itself as “Busy.”

The Background section restates this as:

If a multimedia server a) becomes unable to serve any more clients unless some of the active clients complete their sessions, because it is serving too many clients, or b) becomes unable to serve its clients due to a system or network failure, a client attempting to establish a connection to the impaired system to obtain multimedia service will get a failure message. This is so even though there may be other servers in the network that can provide the multimedia service.

To solve this problem, Civanlar teaches substituting a not-busy server in place of server S1 in Table 3, thereby preventing new clients from being directed to S1. See Col. 6, and the discussion following Table 3. Civanlar does not teach or suggest sending new clients to the server that has the highest availability; rather Civanlar teaches removing servers from the system that are unable to server new clients.

Turning to the presently-pending claims, claims 1 and 2 expressly recite “an association between servers containing the highest availability” (emphasis added). Claims 1 and 2

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are not directed at an association with a server that has any availability; rather an association with the server having the highest availability is claimed. It is respectfully submitted that Civanlar does not teach the element of an association between servers containing the highest availability, as recited in claims 1 and 2. If the Examiner believes that Civanlar teaches an association containing an indication of the server with the highest availability, Applicant respectfully requests a citation to the relevant text.

Applicant submits that Civanlar does not anticipate either claims 1 or 2 because the element of providing or configuring an association between servers containing the highest availability cannot be found in Civanlar. It is respectfully submitted that claims 1 and 2 are allowable over Civanlar.

Turning to independent claim 17, it is respectfully submitted that Civanlar does not anticipate claim 17 for similar reasons. Claim 17 recites in part:

...accessing a database using DNS to select a computer from a plurality of computers, wherein the database includes availability data, configuration data, and load information corresponding to each computer in the plurality,  
dynamically performing loadsharing using the plurality of computers based on load information, availability data, and configuration data...

As mentioned above, Civanlar utilizes only the "service state" as populated in Table 3 in the connection process. Applicant respectfully submits that Civanlar does not disclose accessing a database that includes a combination of information such as availability, configuration, and load information, and dynamically performing loadsharing

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using this information. As Civanlar does not disclose the elements of claim 17, Civanlar cannot anticipate claim 17. It is respectfully submitted that claim 17 is allowable over Civanlar.

Regarding dependent claims 2-16 and 18-19, it is believed that the dependent claims are allowable as being dependent from base claims that are now allowable in view of the arguments presented herein.

Applicant respectfully submits that the cited references do not teach or suggest the limitations of the present claims.

Applicant requests reconsideration and early allowance of the present case. If the Examiner has any questions regarding this application, the Examiner may telephone the undersigned attorney at 775-848-5624.

Respectfully submitted,  
SIERRA PATENT GROUP, LTD.

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Timothy A. Brisson  
Reg. No.: 44,046

Sierra Patent Group, Ltd.  
P.O. Box 6149  
Stateline, NV 89449  
(775) 586-9500